

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
Plaintiff/Respondent,	§	
	§	
V.	§	CR. No. C-07-57
	§	C.A. No. C-09-196
ROBERT WILLIAM AYERS III,	§	
Defendant/Movant.	§	

**ORDER CONSTRUING DOCUMENT AS NOTICE OF APPEAL AND
ORDER GRANTING LEAVE TO PROCEED ON APPEAL *IN FORMA PAUPERIS***

By Order signed and entered June 14, 2010, the Court denied Robert William Ayers III's ("Ayers") motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. (See D.E. 112 (denying D.E. 98); D.E. 113.)¹ On August 2, 2010, the Clerk received from Ayers a motion titled as a "motion for an undetermined enlargement of time to file any response [sic], argument or appeal" and which also references the denial of his § 2255 motion. (D.E. 114.) In it, Ayers states that he has recently had multiple back surgeries and is taking various prescribed pain medications that hinder his ability to concentrate and make important decisions. (D.E. 114 at 1-2.) He thus requests an order allowing him to prepare a response, appeal or argument after he is released from a doctor's care. The motion is dated July 22, 2010. (D.E. 114 at 2.)

Ayers has also included a document showing information from his inmate account and his motion also includes a request to proceed on appeal *in forma pauperis*. (D.E. 114 at 1, 4-5.)

Although Ayers is requesting an extension of time to appeal or to file a response, his document itself clearly evidences an intent to appeal and references the denial of his § 2255 motion. Additionally, it was filed within the period for appealing from his § 2255 motion. See Fed. R. app.

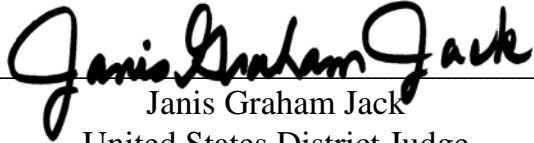
¹ Dockets entries refer to the criminal case, C-07-cr-57.

P. 4(a)(1)(B) (allowing 60 days to file a notice of appeal); Rule 11, RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS (2009) (Fed. R. App. P. 4(a) governs appeals from order entered in a § 2255 proceeding). Accordingly, the Court hereby construes Ayers' filing as a Notice of Appeal. See United States v. Cantwell, 470 F.3d 1087, 1088-89 (5th Cir. 2006) (noting that a motion evincing an intent to appeal filed within the time specified by Fed. R. App. P. 4 and containing the information required by Fed. R. App. P. 3 is effective as a notice of appeal); The Clerk is hereby directed to docket it accordingly.

In the event that there are deadlines set by the United States Court of Appeals for the Fifth Circuit that Ayers believes he is unable to meet due to his medical restrictions, he may seek an extension of time from the Fifth Circuit.

Additionally, the financial information submitted by Ayers indicates that the account balance in his prison account is \$.07, and that his average daily balance in the six months preceding his application was \$ 9.20. (D.E. 114 at 4.) Based on this information, the Court concludes that Ayers is unable to afford the \$455 appellate filing fee. Accordingly, Ayers' motion to proceed on appeal *in forma pauperis* is GRANTED.

It is so ORDERED this 10th day of August, 2010.


Janis Graham Jack
United States District Judge